



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

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JAN 5 2010

JAN 15 2010

REPLY TO THE ATTENTION OF:

WQ-16J

William Creal, Chief
Water Bureau
Michigan Department of Environmental Quality
P.O. Box 30273
Lansing, Michigan 48909-7773

Dear Mr. Creal:


Thank you for your letter of December 18, 2009, submitting Michigan's multiple discharger variance for mercury for fiscal years 2010 – 2014 to U.S. Environmental Protection Agency for review and approval under the Clean Water Act (CWA). This multiple discharger variance for mercury replaces the previous multiple discharger variance for mercury that was approved by EPA on June 29, 2004.

Consistent with section 303(c) of the CWA and federal regulations at 40 CFR §131.21, EPA is required to review and approve new or revised state water quality standards. EPA has reviewed Michigan's multiple discharger variance for mercury for fiscal years 2010 – 2014 and hereby approves the variance pursuant to section 303(c) of the CWA and federal regulations at 40 CFR §131.21 subject to completion of consultation with U.S. Fish and Wildlife Service (FWS) under section 7 of the Endangered Species Act (ESA).

Consistent with section 7 of the ESA and federal regulations at 50 CFR Part 402, EPA is required to consult with FWS on any action that may affect federally-listed threatened and endangered species. Pursuant to the "Memorandum of Agreement Between the Environmental Protection Agency, Fish and Wildlife Service and National Marine Fisheries Service Regarding Enhanced Coordination Under the Clean Water Act and Endangered Species Act" (the MOA) governing consultation with FWS, the approval of new and revised State water quality criteria under section 303 of the CWA is an action requiring consultation. To date, EPA has initiated, but not completed, consultation with FWS on the revised rules approved above. EPA has determined that this approval action does not violate section 7(d) of the ESA, which prohibits irreversible or irretrievable commitments of resources that have the effect of foreclosing the formulation or implementation of reasonable and prudent alternatives, and has included in the record the basis for the conclusion that there are no impacts of concern during the interim period until the consultation is completed.

If you or your staff has any questions regarding this approval, please contact David Pfeifer of my staff at (312) 353-9024.

Sincerely,


For Tinka G. Hyde
Director, Water Division

cc: Diana Klemans, MDEQ
Craig Czarnecki, USFWS